TRAVANCORE GOVERNMENT GAZETTE, SUPPLEMENT.

Tuesday, 24th May 1898.

Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 3 P. M., on Saturday the 21st May 1898. / 9th Edavom 1073.

PRESENT.

M. R. Ry. K. Krishnaswamy Rao Avergal, Dewan Bahadur., F. M. U., Dewan ... ... *Presiding.*

M. R. Ry. V. Nagam Aiya Avergal, B. A., F. R. H. S.
M. R. Ry. P. Thanu Pillai Avergal, M. A.
Mr. C. J. Maltby.
M. R. Ry. T. Rajaram Row Avergal, B. A.
Mr. I. H. Prince.
Mr. K. Kuruvila, B. C. E.
M. R. Ry. K. Kochu Krishna Marar Avergal, B. A., B. L.

The Secretary.—I beg to annbunce that the Abkari Regulation Amendment Bill and the Legislative Council Regulation Amendment Bill, passed by the Council on the 12th March 1898, received the Royal assent on the 15th and 21st March respectively, and have become law as Regulations IV and V of 1073, the former coming into force on the 10th Meenom 1073, and the latter from the 1st Chingom 1074.

PENAL CODE BILL.

Mr. Thanu Pillai.—I beg to propose the amendment of which I have given notice.

Section 3. Change the full stop at the end of the section into a comma and add the following :—'and which prohibits the award of capital punishment to more than one person convicted of the same offence.'

This amendment may at first sight appear to involve an important principle, and it is therefore necessary that I should say a word of explanation for bringing it forward at this late stage. In the Bill as originally introduced, the section stood thus :—"Nothing in this Regulation is intended to repeal, vary, suspend or affect any of the provisions of any special or local law or *any custom or usage relating to capital sentence.*" The Council, at what I may call the 2nd reading of the Bill, affirmed and accepted the principle of the section. At a later stage, however, it was deemed necessary to specify the custom or usage which the section was intended to save. Accordingly the words "*the customary law which exempts Brahmins and women of all classes from capital punishment*" were substituted for the words "*any custom or usage relating to capital sentence.*" It has since

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been found that the above amendment left out one important custom, which is no less immemorial and reasonable, viz., that only one person can be sentenced to capital punishment though more than one person may have been convicted of the same offence. It is, as I said, an immemorial custom and has also received judicial recognition. In Criminal case No. 27 of 1045 on the file of the Alleppey Sessions Court, 3 persons were found guilty of having jointly committed a murder, but only one of them was sentenced to death, the other two being sentenced to imprisonment for life. The British Resident to whom the proceedings were sent up in the usual course, expressed his opinion that, as all the three were equally guilty of the offence of murder, they should have all been sentenced to death. In reference to the above expression of opinion, the late Sadr Court observed:—"We agree that these prisoners (2nd and 3rd) are guilty of the offence of murder as much as the 1st. In this State, however, it appears to have been a long established practice not to insist on the sacrifice of more than one life for a life taken, whatever be the number of persons who may have been actually engaged in the commission of the deed; and we may add our opinion that the restriction thus established by usage is not altogether unwise. If capital punishment is a necessary evil which modern legislators are endeavouring to mitigate by proposing a substitute of a less awful kind, it may be presumed that the usage of this Sirkar cannot be much at fault in confining the extreme penalty to the chief of a number of joint authors of the crime." The Resident after considering the matter in the light of the above observations stated:—"The Resident is glad that he does not feel bound to recommend any alteration of the Sadr Court's sentence."

The question of the existence and validity of this custom came up for consideration by the High Court in a recent case (Referred case No. 5 of 1071). In that case the Sessions Judge of Nagercoil sentenced two persons concerned in the same offence to death. The High Court in their judgment observed:—"According to the customs of Travancore, subject to which we are bound to follow the provisions of the Penal Code, no more than one person could be hanged for the murder of one person." They accordingly altered the sentence of death passed on one of the prisoners into one of imprisonment for life.

Thus the Council will see there is no doubt as to the existence of the custom. Of course, it is not for us to enter into any academic discussion on the justice or propriety of capital punishment. All that we have to consider is whether sufficient reason exists for modifying this long established custom. I do not think any one will be prepared to contend that this custom has been productive of any practical harm or that it has prompted or promoted crime.

It may be argued that the amendment is defective, inasmuch as it lays down no definite rule or direction for the guidance of the Courts in selecting one out of a number of convicted persons for the extreme penalty of the law. There may be cases in which two or more persons may have jointly and equally compassed the death of a man by simultaneously shooting or stabbing him, and medical evidence may show that each separate wound is sufficient to destroy life. The argument, I must confess, is not without force. But it appears to me that though the injury inflicted by each may be equally deadly, there may be other circumstances to guide the judge in performing the undoubtedly very delicate and difficult task of choosing one for the extreme punishment. In almost every case, one person will be found to be at the bottom of the transaction—the prompter, the originator or the organiser—the others being merely his tools. It does not appear that, though the custom has been hitherto strictly followed here, any difficulty has arisen in practice. I think, therefore, I may safely assert that the difficulty apprehended is not of a magnitude to justify a departure from an immemorial and, if I may be permitted to say so, humane custom in this Land of Charity. I should also mention that in the Penal Code death is not the only punishment for the offence of murder. There is the alternative punishment of imprisonment for life, so that it is open to the Judge to sentence a man convicted of murder to imprisonment for life except where the culprit is already under sentence of imprisonment for life. I believe in British India where there is no such custom, instances of sentence of death being passed on more than one person for the same offence are extremely rare. That shows that the amendment I propose would not make much practical difference.

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Mr. Prince.—I beg to second the amendment. From my long experience of over 24 years in the High Court, I know it has been invariably the custom not to sentence to death more than one person for the same offence. I think it is a most humane custom.

President.—The amendment in question simply supplies an ommission which inadvertently occurred at the 3rd reading of the Bill, when the custom was specified. This amendment seeks to give full effect to the principle then affirmed, that the customary law regarding sentence of death should remain in force.

Carried.

Mr. Thanu Pillai.—With the permission of the President, I would propose a few more amendments which involve no principle, but are merely verbal.

In *section 68*, Illustration, 3rd line, substitute "act" for "fact."

Seconded by Mr. Prince.

Carried.

Section 182.—Omit the words "or both" at the end of para 1. These have really no place here because only one kind of punishment is provided.

Seconded by Mr. Prince.

Carried.

Sections 517 and 518. In the 3rd line of section 517 and 2nd line of section 518, substitute "sentence passed on such conviction" for "punishment imposed on the previous conviction." We have adopted a similar modification in section 64.

Seconded by Mr. Prince.

Carried.

Mr. Thanu Pillai.—Having already omitted one section (288) of the Bill we have to alter the numbering of all subsequent sections accordingly. I would, therefore, propose the following:— "Modify the numbers of all the sections from 289 to 520, beginning from 288 and ending with 519, altering the numbers in the body of the sections with reference to these modifications.

Seconded by Mr. Prince.

Carried.

Mr. Thanu Pillai.—I beg to move that the Bill as amended be passed and that it come into force on the first day of Makarom 1074.

Seconded by Mr. Rajaram Rao.

The motion was put and agreed to.

DEPARTMENTAL ENQUIRIES BILL.

Mr. Thanu Pillai.—The amendments I propose do not require much explanation.

Section 2. Omit "the" before "Heads of Departments," and insert the words "drawing a salary not less than Rs. 300" between "Departments" and "Dewan Peishcars."

The object of this amendment is, I believe, plain. The power conferred by this section, though doubtless very necessary for the discovery of truth in departmental enquiries, is one which, if not carefully and properly exercised, is likely to prove detrimental to the interests of public servants, and also prove a source of inconvenience and even oppression to the general public. It is possible for a public servant if so minded, to harass any person, man or woman, under the guise of departmental enquiry, and there must be some safeguard against all possible abuse of this power. The Bill itself affords a safeguard in the provision that only officers of position can exercise this power. But in the absence of a definition of the expression "Heads of Departments," this safeguard is not complete. There is no clear definition anywhere except that contained in the Leave Rules where, I believe,

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